



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

Biotechnology Law Group  
c/o Portfolioip  
P.O. Box 52050  
Minneapolis, MN 55402

**COPY MAILED**

**JUN 09 2008**

In re Application of Hofmann	:	
Application No. 09/900,601	:	Decision on Petition
Filing Date: July 5, 2001	:	
Attorney Docket No. GTI-1200-CT2	:	

This is a decision on the petition under 37 CFR 1.137(b), filed February 27, 2008, to revive the above-identified application. The petition is also being treated under 37 CFR 1.181 (no fee) as a petition to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **granted**.

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

Facts:

The Office mailed a Notice of Allowance and a Notice of Allowability on May 26, 2004. The Notice of Allowance required the submission of the issue fee and publication fee within three months.

The Notices were returned undelivered to the USPTO on October 29, 2004. The file record fails to indicate the reason the Notices were not delivered.

The Office did not receive the issue fee or publication fee.

A Notice of Abandonment was mailed May 17, 2006.

Discussion:

A review of the record indicates the application was improperly held abandoned.

MPEP 707.13 states,

Office actions are sometimes returned to the Office because the United States Postal Service has not been able to deliver them. Upon receipt of the returned Office action, the Technology Center (TC) technical support staff will check the application file record to ensure that the Office action was mailed to the correct correspondence address. If the

Office action was not mailed to the correct correspondence address, it should be stamped "remailed" with the remailing date and mailed to the correct correspondence address. The period running against the application begins with the date of remailing. If the Office action was mailed to the correct correspondence address and it was addressed to an attorney or agent, a letter along with a copy of the Office action may be sent to the first named inventor or assignee (if available) informing him or her of the returned action. The time period for reply to the Office action will be restarted to run from the mailing date of the letter informing applicant of the returned action.

If the Office is not finally successful in delivering the letter, it is placed, with the envelope, in the file wrapper. For an Image File Wrapper (IFW), a copy of the letter and a copy of the envelope should be added to the IFW (see IFW Manual). If the period dating from the remailing elapses with no communication from applicant, the application is abandoned.

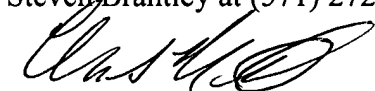
The Office should have attempted to send a letter to the assignee or first named inventor and restarted the time period to respond. MPEP 707.13 states, "If the period dating from the remailing elapses with no communication from applicant, the application is abandoned." Since the Notice of Allowance was not remailed, the time period dating from the remailing of the Notice of Allowance has not expired and the application is not abandoned.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Since the petition has been granted under 37 CFR 1.181, petitioner's request to have the petition considered under 37 CFR 1.137(b) is dismissed as moot. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, the Office has scheduled a refund of the \$770 petition fee.

The Office of Data Management will be informed of the instant decision and the application will be prepared for issuance as a patent in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions